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Submitted electronically on November 4, 2022
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RE: Connecticut Green Bank Comments - IRS Notice 2022-51

Connecticut Green Bank (“Green Bank”) respectfully submits the following comments in response to IRS Notice 2022-51 and the changes made to the Internal Revenue Code by the Inflation Reduction Act of 2022 (the “IRA”). As the nation’s first green bank, Green Bank leverages the limited public resources it receives to attract multiples of private investment to scale up clean energy deployment. Since its inception, the Green Bank has mobilized \$2.14 billion of investment into Connecticut’s clean energy economy at a 7.4 to 1 leverage ratio of private to public funds, supported the creation of 25,612 direct, indirect and induced jobs, reduced the energy burden on over 63,000 families and businesses, deployed over 494 MW of clean renewable energy, helped avoid 9.9 million tons of CO2 emissions over the life of the projects, and generated \$107.4 million in individual income, corporate, and sales tax revenues to the State of Connecticut.

Green Bank was authorized pursuant to Connecticut General Statutes Section 16-245n as “a body politic and corporate, constituting a public instrumentality and political subdivision of the State of Connecticut established and created for the performance of an essential public and governmental function. The Connecticut Green Bank shall not be construed to be a department, institution or agency of the state.” Green Bank is granted powers which it may use in furtherance of or in carrying out its purposes, including but not limited to, the ability to:

1. invest in, acquire, lease, purchase, own, manage, hold, sell and dispose of real or personal property or any interest therein, and
2. form subsidiaries, and transfer to any such subsidiary any moneys and real or personal property of any kind or nature. Any subsidiary may be organized as a stock or nonstock corporation or a limited liability company. Each such subsidiary shall have and may exercise such powers of said bank and such other powers provided to it by law.

The IRA contains a number of provisions that are intended to encourage investments in clean energy and that could significantly improve Green Bank’s ability to satisfy its statutory mandate, including the elective payment of applicable credits pursuant to Section 6417 of the Code. Allowing a political subdivisions of a State and other tax-exempt entities to benefit from the applicable tax credits could allow the Green Bank to continue to deploy clean energy especially to underserved markets. As the Treasury Department considers additional guidance regarding these provisions we urge you take into account the considerations described below.

Notice 2022-51

.03 Domestic Content Requirement

(3) Solely for purposes of determining whether a reduction in an elective payment amount is required under § 6417, §§ 45(b)(10)(D) and 45Y(g)(12)(D) provide an exception for the requirements contained in §§ 45(b)(9)(B) and 45Y(g)(10)(B) (respectively) if the inclusion of steel, iron, or manufactured productions that are produced in the United States increases the overall costs of construction of qualified facilities by more than 25 percent or relevant steel, iron, or manufactured products are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality.

(a) Does the determination of “overall costs” and increases in the overall costs with regard to construction of a qualified facility need further clarification? If so, what should be clarified?

The application of a percentage to “overall costs” is subjective because it would be determined at a particular point in time. For example, if at the start of the procurement process the overall costs without meeting domestic content requirements are \$1million, and the increase would be \$300k to meet the requirement, the increase to overall costs at that point is 30%, meaning an exception is allowable. However, clean energy projects have a long procurement and construction cycle, so that \$300k increase could later represent less than 25%, if the overall costs increase over time. It is not useful to consider the exception retroactively because economic feasibility decisions (i.e., whether to construct a project or not) depend on the amount of tax credit available, and these decisions are made at an earlier stage than when final overall costs are known. It would be helpful to have clarity regarding exactly when the overall costs are determined for purposes of applying the domestic content rules (e.g., by obtaining comparable quotes at a point in time for materials that do and do not meet domestic content requirements, and how that impacts overall costs).

(c) Do the “sufficient and reasonably available quantities” and “satisfactory quality” standards need further clarification? If so, what should be clarified?

Yes, these terms need clarification. For example, it would be helpful to have clarification regarding who decides what is sufficient and reasonable, and satisfactory quality, and how will that be communicated to parties trying to obtain an exception from domestic content requirements.

.04 Energy Community Requirement

(2) Does the determination of a brownfield site (as defined in subparagraphs (A), (B), and (D)(ii)(III) of § 101(39) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(39))) need further clarification? If so, what should be clarified?

Yes, this definition needs to be clarified and since the reference in the IRA is not clear (specifically if (i) the subsection (B) exclusions are meant to be included as part of this definition, (ii) the site needs to meet (A), (B), **and** (D)(ii)(III) requirements – effectively this could limit it to mine-scarred land). The Treasury Department should apply the definition as broadly as permissible. Also, EPA currently maintains a list, however this definition does not exactly match the EPA definition (as stated

above, and it excludes petroleum contaminated sites, (D)(ii)(II) of § 101(39)) and therefore a new or modified source for such site listings is necessary.

(4) Which source or sources of information should the Treasury Department and the IRS consider in determining census tracts that had a coal mine closed after December 31, 1999, or had a coal-fired electric generating unit retired after December 31, 2009, under § 45(b)(11)(B)(iii)? How should the closure of a coal mine or the retirement of a coal-fired electric generating unit be defined under § 45(b)(11)(B)(iii)?

The Treasury Department should clarify definition of coal-fired electric generating unit, which should include dual-use electric generating units (e.g. municipal waste combustor) as long as coal fuel was allowed in its operating permit.